



August 22, 2001

Ms. Theresa K. Valentic
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OR2001-3701

Dear Ms. Valentic:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151044.

The Camelot Volunteer Fire Department (the “department”), which you represent, received seven written requests for “the petition that was used to call for the election of the purported board of directors of Camelot Fire Dept. held on July 25, 2000.” You do not contend that the requested information falls within one of the exceptions from disclosure listed in Subchapter C of the Government Code. *See* Gov’t Code § 552.301(b). Rather, you contend that the department, which you describe as a private non-profit corporation¹, need not release the requested records because the department is not a “governmental body” as defined in section 552.003 of the Government Code. We have also considered the comments submitted to this office by one of the requestors’ attorney. *See* Gov’t Code § 552.304.

Under the Public Information Act, all information, with certain exceptions, that is collected, assembled, or maintained by a “governmental body” is subject to required public disclosure. *See* Gov’t Code § 552.002(a)(1). Section 552.003(1)(A)(x) includes within the definition of governmental body “the part, section, or portion of an organization, *corporation*, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.” (Emphasis added.) The receipt of public funds for the general support of the activities of a private organization brings that organization within the definition of a “governmental body” unless the public funds are paid in exchange for a measurable amount of service as would be expected in a typical arms-length transaction. Open Records Decision No. 228 (1979); *see also* Attorney General Opinion JM-821 (1987).

¹ We do not address here whether the department must release the requested records pursuant to the Texas Non-Profit Corporation Act, V.T.C.S. art. 1396. Article 1396-2.23A(C) provides that, with certain exceptions, all records, books, and annual reports of non-profit corporations established under that article must be kept at the registered office or principal office of the corporation for at least three years and must be made available to the public for inspection and copying.

"Whether or not a particular nonprofit volunteer fire department [is subject to the Public Information Act] depends on the circumstances in each case, including the terms of the contract between the department and the public entity." Attorney General Opinion JM-821 at 5 (1987). Furthermore,

a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a "governmental body." . . . The overall nature of the relationship created by the contract is relevant in determining whether the private entity is so closely associated with the governmental body that the private entity is a governmental body. [Footnote omitted.]

Id. at 4. In this regard, we note that fire protection "is one of the services traditionally provided by governmental bodies." *Id.* at 5; *see also Kneeland v. National Collegiate Athletic Ass'n*, 850 F.2d 224, 228 (5th Cir. 1988), *rev'g* 650 F. Supp. 1047 (W.D. Tex. 1986), *cert. denied*, 488 U.S. 1042 (1989).

You have submitted to this office for review a copy of the contract between the department and Bexar County (the "county") that establishes the manner in which the department receives funds from the county. The contract is titled "Volunteer Fire Department Assistance Agreement," and reflects the county's desire "to provide financial assistance to promote the operation of volunteer fire departments in [the county] for the safety of its citizens." Furthermore, the contract specifically provides that the purpose of the agreement is "to assist [the department] in providing fire protection services in the unincorporated area of [the county]." We additionally note that regardless of the number of fires to which the department responds in any given time period, the department will nevertheless receive from the county the same amount of financial support. Further, we note that the department is required under its contract with the county to provide services that the county would otherwise typically provide to its citizens.

After reviewing the contract, we conclude that the contract does not provide for the exchange of public funds for a "measurable amount of service," but rather provides for the department's general support through the receipt of public funds. Thus, the contract between the department and the county is not an "arms-length" transaction between a public entity and a private non-profit corporation. Consequently, after reviewing the totality of the circumstances, we conclude that the department is a "governmental body" under section 552.003(1)(A)(x) of the Government Code and therefore is subject to the provisions of the Public Information Act.

Where an entity receives an *unrestricted* grant from a governmental body, the entire entity is "supported" in part by public funds, and is therefore itself a governmental body under the Public Information Act. Open Records Decision Nos. 302 (1982), 228 (1979). On the other hand, where an entity that would not otherwise be considered a governmental

body receives "support" from public funds only with respect to certain functions of the entity, the entity is subject to the Public Information Act only with respect to those functions "supported" by public funds. Open Records Decision No. 602 (1992).

The contract provides that in exchange for the department's furnishing fire protection for a specified area of the county, the county will provide the department with \$900.00 per month, but solely for the following purposes:

- (a.) Purchase or lease of firefighting equipment;
- (b.) Maintenance and operation of firefighting equipment; and
- (c.) Rental, construction, or purchase of firefighting facilities or buildings.

In this instance, we conclude that because the use of the monthly support that the department receives from the county is restricted to matters concerning firefighting equipment and facilities, only department records pertaining to such matters are subject to the Public Information Act. Because the requested petitions do not directly relate to the department functions supported by county funds, we conclude that the requested records are not subject to public disclosure under chapter 552 of the Government Code. Accordingly, the department may withhold the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental

body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/RWP/seg

Ref: ID# 151044

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